

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

EDWARD WILLIAMS,  
Plaintiff,

v.

GAVIN NEWSOM, et al.,  
Defendants.

No. 2:20-cv-0100 AC

ORDER

Plaintiff, a state prisoner proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

I. Application to Proceed In Forma Pauperis

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). ECF No. 2. Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time

1 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C.  
2 § 1915(b)(2).

### 3 II. Statutory Screening of Prisoner Complaints

4 The court is required to screen complaints brought by prisoners seeking relief against a  
5 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The  
6 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are  
7 "frivolous, malicious, or fail[] to state a claim upon which relief may be granted," or that "seek[]  
8 monetary relief from a defendant who is immune from such relief." 28 U.S.C. § 1915A(b).

9 A claim "is [legally] frivolous where it lacks an arguable basis either in law or in fact."  
10 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th  
11 Cir. 1984). "[A] judge may dismiss . . . claims which are 'based on indisputably meritless legal  
12 theories' or whose 'factual contentions are clearly baseless.'" Jackson v. Arizona, 885 F.2d 639,  
13 640 (9th Cir. 1989) (quoting Neitzke, 490 U.S. at 327), superseded by statute on other grounds as  
14 stated in Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000). The critical inquiry is whether a  
15 constitutional claim, however inartfully pleaded, has an arguable legal and factual basis.  
16 Franklin, 745 F.2d at 1227-28 (citations omitted).

17 "Federal Rule of Civil Procedure 8(a)(2) requires only 'a short and plain statement of the  
18 claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of  
19 what the . . . claim is and the grounds upon which it rests.'" Bell Atl. Corp. v. Twombly, 550  
20 U.S. 544, 555 (2007) (alteration in original) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).  
21 "Failure to state a claim under § 1915A incorporates the familiar standard applied in the context  
22 of failure to state a claim under Federal Rule of Civil Procedure 12(b)(6)." Wilhelm v. Rotman,  
23 680 F.3d 1113, 1121 (9th Cir. 2012) (citations omitted). In order to survive dismissal for failure  
24 to state a claim, a complaint must contain more than "a formulaic recitation of the elements of a  
25 cause of action;" it must contain factual allegations sufficient "to raise a right to relief above the  
26 speculative level." Twombly, 550 U.S. at 555 (citations omitted). "[T]he pleading must contain  
27 something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally  
28 cognizable right of action." Id. (alteration in original) (quoting 5 Charles Alan Wright & Arthur

1 R. Miller, Federal Practice and Procedure § 1216 (3d ed. 2004)).

2 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to  
3 relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting  
4 Twombly, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual  
5 content that allows the court to draw the reasonable inference that the defendant is liable for the  
6 misconduct alleged.” Id. (citing Twombly, 550 U.S. at 556). In reviewing a complaint under this  
7 standard, the court must accept as true the allegations of the complaint in question, Hosp. Bldg.  
8 Co. v. Trs. of the Rex Hosp., 425 U.S. 738, 740 (1976) (citation omitted), as well as construe the  
9 pleading in the light most favorable to the plaintiff and resolve all doubts in the plaintiff’s favor,  
10 Jenkins v. McKeithen, 395 U.S. 411, 421 (1969) (citations omitted).

### 11 III. Complaint

12 Plaintiff brings suit on grounds that his rights to be free from cruel and unusual  
13 punishment and to equal protection are violated by contaminated drinking water at Mule Creek  
14 State Prison. ECF No. 1. The complaint names fourteen defendants, including the current and  
15 former governors of California; several high-ranking CDCR officials; the former warden of  
16 MCSP; various correctional and local water quality control officials; the City of Ione and County  
17 of Amador. Id. at 3-5.

18 The complaint alleges in sum as follows. Plaintiff is forced to consume and bathe in water  
19 that is contaminated with industrial and human waste. Id. at 6. At least 7 sewage and water pipes  
20 on the grounds of MCSP’s Facility A yard are visibly leaking, and the standing water shows an  
21 oily film and smells of raw sewage. Id. at 7-9. The pipes are known to be old and corroded. The  
22 City of Ione took CDCR to court for violations of CEQA. Id. at 9. Plaintiff has suffered harm  
23 and required medical treatment because of the water. Id. at 10-11. MCSP staff have been  
24 advised not to drink the water, and signs warn visitors not to drink the water. Id. at 11. Inmates  
25 have been advised to boil water before drinking it. Id. Prison officials warned staff but not  
26 inmates of the danger, depriving inmates of equal protection. Id. at 12.

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1 IV. Failure to State a Claim

2 A. The Complaint Fails to Establish Plaintiff's Standing

3 "[F]ederal courts are required sua sponte to examine jurisdictional issues such as  
4 standing." B.C. v. Plumas Unified School District, 192 F.3d 1260, 1264 (9th Cir. 1999). To have  
5 standing, a plaintiff must plead and prove that he has suffered sufficient injury to satisfy the "case  
6 or controversy" requirement of Article III of the United States Constitution. See Clapper v.  
7 Amnesty Int'l USA, 568 U.S. 398, 409 (2013). To demonstrate Article III standing, a plaintiff  
8 must allege: (1) injury-in-fact that is concrete and particularized, as well as actual or imminent;  
9 (2) that the injury is fairly traceable to the challenged action of the defendant; and (3) that the  
10 injury is redressable by a favorable ruling. Monsanto Co. v. Geertson Seed Farms, 561 U.S. 139,  
11 149 (2010) (citation omitted); Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992).

12 Here, plaintiff alleges only in conclusory terms that he has been injured by the  
13 contaminated water. See, ECF No. 1 at 6 ("I have suffered grievous injury..."), 10 (plaintiff  
14 complained to his family about "pains" and "injuries"), 11 ("This water has harmed plaintiff  
15 where medical had to provide medication."). These conclusory allegations of injury are not  
16 "concrete and particularized" and therefore do not confer standing. While plaintiff's distress  
17 about water quality problems is entirely understandable, it does not give him the right to sue. He  
18 must specify the nature of his injuries and state facts sufficient to show that those injuries were  
19 caused by water contamination.

20 B. Several Named Defendants Are Immune from Suit

21 To the extent that they are sued for damages in their official capacities, Governors  
22 Newsom and Brown enjoy the state's Eleventh Amendment immunity.<sup>1</sup> See Ass'n des Eleveurs  
23 de Canards et d'Oies du Quebec v. Harris, 729 F.3d 937, 943 (9th Cir. 2013). The same is true of  
24 the CDCR defendants. Moreover, it is paradigmatic that state officials sued in their official  
25 capacities are not "persons" within the meaning of § 1983 except when sued for prospective  
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27 <sup>1</sup> Plaintiff expressly seeks money damages from these defendants. ECF No. 1 at 18. The only  
28 injunctive relief that plaintiff seeks is a governor's pardon or commutation of his sentence, id. at  
17, which is not available as a remedy in this case.

1 injunctive relief. Doe v. Lawrence Livermore Nat'l Lab., 131 F.3d 836, 839 (9th Cir. 1997). To  
 2 the extent that all defendants are also named in their personal capacities, they can be liable only  
 3 for their own specific actions as the court now explains.

4 C. The Complaint Does Not Identify the Persons Who Caused the Alleged Violations

5 Section 1983 establishes liability for those persons who cause deprivations of a plaintiff's  
 6 rights. See Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). A complaint must specify how  
 7 each defendant caused the alleged violations. See Ortez v. Washington County, State of Oregon,  
 8 88 F.3d 804, 809 (9th Cir. 1996); see also Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989).  
 9 No official is liable due solely to his position or rank; there is no *respondeat superior* liability  
 10 under § 1983. Iqbal, 556 U.S. at 676. Supervisors may be liable for their own supervisory acts or  
 11 omissions, but not for the acts of those over whom they have authority. Starr v. Baca, 652 F.3d  
 12 1202, 1205-06 (9th Cir. 2011).

13 Here, the complaint fails to specify the actions of individually named defendants that  
 14 caused the conditions of which plaintiff complains. There are no factual allegations at all  
 15 regarding most of the defendants. The allegations against former MCSP Warden Lizarraga are  
 16 primarily generalized assertions that he was aware of the problem and did not fix it. Without  
 17 details, it is impossible for the court to determine whether plaintiff has stated a claim against  
 18 him.

19 D. Plaintiff Has Not Alleged Facts Stating an Eighth Amendment Claim

20 Conditions of confinement violate the Eighth Amendment when two requirements are  
 21 met. Farmer v. Brennan, 511 U.S. 825, 834 (1994). First, the deprivation alleged must be,  
 22 objectively, sufficiently serious; a prison official's act or omission must result in the denial of the  
 23 minimal civilized measure of life's necessities. Id. Second, the prison official must subjectively  
 24 have a sufficiently culpable state of mind, one of deliberate indifference to inmate health or  
 25 safety. Id. An official is not liable under the Eighth Amendment unless he knows of and  
 26 "disregards an excessive risk to inmate health or safety; the official must both be aware of facts  
 27 from which the inference could be drawn that a substantial risk of serious harm exists, and he  
 28 must also draw the inference." Id. at 837. Then he must fail to take reasonable measures to abate

1 the substantial risk of serious harm. Id. at 847. Mere negligent failure to protect an inmate from  
2 harm is not actionable under § 1983. Id. at 835-36.

3 Here plaintiff not provided facts sufficient to establish either element of an Eighth  
4 Amendment claim. The specific allegations of visible water contamination and the smell of  
5 sewage all involve broken pipes in the prison yard, not water coming into plaintiff's cell. Broken  
6 sewage pipes are a clear sanitation problem, but they do not indicate that the water provided to  
7 plaintiff for drinking and bathing is contaminated. There are no facts demonstrating the unsafety  
8 of the water that is made available for drinking and bathing. The allegation that local government  
9 has taken action against the prison under CEQA indicates that there may be an environmental  
10 problem at MCSP, but not that plaintiff is required to drink and bathe in contaminated water. The  
11 alleged advisements to staff and visitors not to drink the tap water is also insufficient without  
12 more to establish a serious risk to plaintiff. The complaint does not state that inmates are denied  
13 bottled drinking water, and even if the running water in cells is not good to drink, that does not  
14 necessarily mean that it is unsafe to bathe in.

15 The complaint also lacks facts showing a deliberately indifferent state of mind as to any  
16 defendant. As noted previously, there are no specific allegations regarding most of the  
17 defendants. As to former Warden Lizarraga, his knowledge of a CEQA issue or broken sewage  
18 pipes in the yard does not support an inference that he was aware the water available to inmates  
19 posed an excessive risk to health and safety. The complaint does not allege that Lizarraga failed  
20 to take reasonable abatement measures such as providing bottled water.

21 For all these reasons, the complaint fails to state an Eighth Amendment claim. More facts  
22 are needed.

23 E. Plaintiff Has Not Alleged Facts Stating an Equal Protection Claim

24 The Equal Protection Clause broadly requires the government to treat similarly situated  
25 people equally. Hartmann v. Cal. Dep't of Corr. & Rehab., 707 F.3d 1114, 1123 (9th Cir. 2013).  
26 To state a claim, a plaintiff must typically allege that defendants acted with an intent or purpose  
27 to discriminate against him based upon membership in a protected class, such as a particular race  
28

1 or religion. See Furnace v. Sullivan, 705 F.3d 1021, 1030 (9th Cir. 2013).<sup>2</sup> Inmates are not a  
 2 protected class for equal protection purposes, nor are they similarly situated to prison staff and  
 3 employees. Accordingly, this claim fails as a matter of law.

4 Because prison officials have an independent Eighth Amendment obligation to ensure safe  
 5 and sanitary conditions for inmates, the theory of disparate treatment for inmates as compared to  
 6 staff adds nothing to plaintiff's potential recovery in any event. In other words, this claim  
 7 appears to be superfluous.

#### 8 V. Leave to Amend

9 Plaintiff will be provided the opportunity to amend the complaint. If he chooses to file a  
 10 first amended complaint, plaintiff must demonstrate how the conditions about which he  
 11 complains resulted in a deprivation of his constitutional rights. Rizzo v. Goode, 423 U.S. 362,  
 12 370-71 (1976). Also, the complaint must allege in specific terms how each named defendant is  
 13 involved. Arnold v. Int'l Bus. Machs. Corp., 637 F.2d 1350, 1355 (9th Cir. 1981). There can be  
 14 no liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a  
 15 defendant's actions and the claimed deprivation. Id.; Johnson v. Duffy, 588 F.2d 740, 743 (9th  
 16 Cir. 1978). Furthermore, "[v]ague and conclusory allegations of official participation in civil  
 17 rights violations are not sufficient." Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982)  
 18 (citations omitted).

19 Plaintiff is also informed that the court cannot refer to a prior pleading in order to make  
 20 his first amended complaint complete. Local Rule 220 requires that an amended complaint be  
 21 complete in itself without reference to any prior pleading. This is because, as a general rule, an  
 22 amended complaint supersedes the original complaint. Loux v. Rhay, 375 F.2d 55, 57 (9th Cir.  
 23 1967) (citations omitted), overruled in part by Lacey v. Maricopa County, 693 F.3d 896, 928 (9th  
 24 Cir. 2012) (claims dismissed with prejudice and without leave to amend do not have to be re-pled  
 25 in subsequent amended complaint to preserve appeal). Once plaintiff files a first amended  
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27 <sup>2</sup> Where the governmental classification does not involve a suspect or protected class, the  
 28 classification satisfies equal protection if it has a rational relationship to a legitimate  
 governmental purpose. See Nurre v. Whitehead, 580 F.3d 1087, 1098 (9th Cir. 2009).

1 complaint, the original complaint no longer serves any function in the case. Therefore, in an  
2 amended complaint, as in an original complaint, each claim and the involvement of each  
3 defendant must be sufficiently alleged.

4 VI. Plain Language Summary of this Order for a Pro Se Litigant

5 Your request to proceed in forma pauperis is granted and you are not required to pay the  
6 entire filing fee immediately.

7 You are being given leave to amend because the facts you have alleged in the complaint  
8 are not enough to state a claim for relief. In order to bring a lawsuit about water quality at Mule  
9 Creek, you must first provide specific facts showing that you were harmed by contaminated  
10 water. It is not enough to say, "I was injured." You must describe the nature of your injuries and  
11 show they were caused by the water. Then to show a violation of the Eighth Amendment, you  
12 must provide specific facts showing (1) that the water provided for drinking and bathing posed an  
13 excessive risk to inmate health and safety, and (2) that particular defendants knew of that  
14 excessive risk and deliberately failed to take action to protect inmate health and safety. You  
15 should only name as defendants the individuals who acted with deliberate indifference and thus  
16 caused your injuries, and you must state concrete facts showing deliberate indifference as to each  
17 person you name.

18 If you choose to amend your complaint, the first amended complaint must include all of  
19 the claims you want to make because the court will not look at the claims or information in the  
20 original complaint. **Any claims not in the first amended complaint will not be considered.**

21 CONCLUSION

22 In accordance with the above, IT IS HEREBY ORDERED that:

23 1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 2) is granted.

24 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff  
25 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.  
26 § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the  
27 Director of the California Department of Corrections and Rehabilitation filed concurrently  
28 herewith.




1           3. Plaintiff's complaint fails to state a claim upon which relief may be granted, see 28  
2 U.S.C. § 1915A, and will not be served.

3           4. Within thirty days from the date of service of this order, plaintiff may file an amended  
4 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil  
5 Procedure, and the Local Rules of Practice. The amended complaint must bear the docket  
6 number assigned this case and must be labeled "First Amended Complaint." Plaintiff must file an  
7 original and two copies of the amended complaint. Failure to file an amended complaint in  
8 accordance with this order will result in dismissal of this action.

9           5. The Clerk of the Court is directed to send plaintiff a copy of the prisoner complaint  
10 form used in this district.

11 DATED: June 9, 2021

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13 ALLISON CLAIRE  
14 UNITED STATES MAGISTRATE JUDGE  
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